

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

THE TRAVELERS INDEMNITY)
COMPANY, a Connecticut Corporation, as)
successor in interest to Gulf Insurance)
Company,)

Plaintiff,

vs.

CHRISTOPHER HOMES, LLC, a Nevada)
limited liability company; J. CHRISTOPHER)
STUHMER, individually and as Trustee of)
THE JCS FAMILY #1 TRUST DATED)
AUGUST 30, 2001 and THE JCS FAMILY #2)
TRUST DATED DECEMBER 10, 2001;)
MARK A. STUHMER, as Trustee of THE JCS)
FAMILY #1 TRUST DATED AUGUST 30,)
2001; MICHELLE D. STUHMER,)
individually; THE JCS FAMILY #1 TRUST)
DATED AUGUST 30, 2001; and THE JCS)
FAMILY #2 TRUST DATED DECEMBER)
10, 2001,)

Defendants.

Case No.: 2:13-cv-01189-GMN-VCF

ORDER

Pending before the Court is the Motion for Summary Judgment (ECF No. 16) filed by Plaintiff Travelers Indemnity Company (“Plaintiff”). Defendants filed a Response and Countermotion for Relief Under Rule 56(d). (ECF Nos. 22, 23.) Plaintiff subsequently filed a Reply and Response to Defendants’ Countermotion. (ECF Nos. 24, 25.) Finally, Defendants filed a Reply to Plaintiff’s Response to Defendants’ Countermotion. (ECF No. 26.)

I. BACKGROUND

This case involves surety bonds that Plaintiff issued to Defendants in connection with Defendants’ performance of construction services. (Compl. ¶ 14, ECF No. 1.) To obtain the

1 requested surety bonds, Defendants executed a General Agreement of Indemnity in favor of
2 Plaintiff. (*Id.* ¶ 15.) These bonds “guaranteed Defendants’ performance of certain specified
3 real estate development / construction-related work in connection with the development of real
4 property.” (*Id.* ¶ 17.) Thereafter, Defendants allegedly experienced difficulty fulfilling their
5 obligations on the development projects that the subject surety bonds covered. (*Id.* ¶ 18.) As a
6 result, Plaintiff “investigated and, as appropriate, satisfied claims against the Bonds that it
7 issued on behalf of and/or at the request of Defendants.” (*Id.*)

8 Plaintiff now seeks to recover the losses that it incurred when it satisfied these claims.
9 (*Id.* ¶¶ 18–19.) Accordingly, Plaintiff initiated this action on July 8, 2013, alleging five causes
10 of action: (1) Breach of Indemnity Agreement Against Defendants; (2) Specific Performance of
11 Indemnity Agreement Against Defendants; (3) Equitable Indemnity Against Defendants; (4)
12 Quia Timet Against Defendants; and (5) Declaratory Relief Against Defendants. (*Id.* ¶¶ 20–50.)

13 Subsequently, Plaintiff filed a Motion for Summary Judgment. (ECF No. 16.) However,
14 because this Motion was filed more than four months before the close of discovery and more
15 than five months before the dispositive motions deadline, (*see* Scheduling Order, ECF No. 15),
16 Defendants filed a Countermotion requesting that this Court defer ruling on or deny Plaintiff’s
17 Motion for Summary Judgment pursuant to Rule 56(d) of the Federal Rules of Civil Procedure
18 (Countermot., ECF No. 23). For the reasons stated below, Defendant’s Motion (ECF No. 23) is
19 GRANTED and Plaintiff’s Motion for Summary Judgment (ECF No. 16) is DENIED without
20 prejudice.

21 **II. LEGAL STANDARD**

22 Pursuant to Rule 56(d) of the Federal Rules of Civil Procedure, “a district court should
23 continue a summary judgment motion upon a good faith showing by affidavit that the
24 continuance is needed to obtain facts essential to preclude summary judgment.” *California. v.*
25 *Campbell*, 138 F.3d 772, 779 (9th Cir. 1998). Specifically, Rule 56(d) authorizes a court to

1 “defer considering the motion [for summary judgment] or deny it” when the “nonmovant shows
2 by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify
3 its opposition.” Fed. R. Civ. P. 56(d). Thus, to obtain relief under Rule 56(d), the nonmovant
4 must show “(1) that [it has] set forth in affidavit form the specific facts that they hope to elicit
5 from further discovery, (2) that the facts sought exist, and (3) that these sought-after facts are
6 ‘essential’ to resist the summary judgment motion.” *Campbell*, 138 F.3d at 779.

7 **III. DISCUSSION**

8 In their countermotion, Defendants assert that Plaintiff’s Motion for Summary Judgment
9 is premature because discovery has not yet closed and Defendants need additional time to
10 conduct the discovery necessary to oppose Plaintiff’s Motion. (Countermot. 17:4–18:23, ECF
11 No. 23.) The Court agrees. Defendants have established the three requirements articulated by
12 the Ninth Circuit in *California v. Campbell* and, thus, have established that they are entitled to
13 relief under Rule 56(d).

14 First, Defendants provide a declaration of J. Christopher Stuhmer that details the
15 discovery that Defendants still wish to complete and the facts that such discovery should reveal.
16 (Countermot. Ex. A ¶¶ 16–24, ECF No. 23.) Specifically, Defendants want additional time to
17 depose the former Vice President of Defendant Christopher Homes, LLC on the issues of
18 Travelers’ failure to “notify [Defendant Christopher Homes, LLC] of [Plaintiff’s] intent to
19 retain an independent contractor and disburse bond funds.” (*Id.* ¶ 17, 22.) Defendants also seek
20 facts relating to “what construction was needed to complete the projects” and how the costs to
21 complete these projects escalated to nearly \$300,000.00. (*Id.* ¶¶ 16, 19, 22.) Second,
22 Defendants have adequately established that “the facts sought exist,” *California v. Campbell*,
23 138 F.3d at 779, by identifying the specific requests and the specific individuals whom
24 Defendants would like to depose (Countermot. Ex. A. ¶¶ 22). Finally, Defendants have
25 demonstrated that these facts are essential to resist Plaintiff’s Motion for Summary Judgment.

These facts not only contradict statements in Plaintiff's Motion for Summary Judgment, but also may aid Defendants in establishing their affirmative defenses of equitable estoppel and bad faith, (*see* Answer 3:¶¶1–2, ECF No. 13).

In its opposition, Plaintiff argues that it has carried its burden and is entitled to summary judgment. (Pl.'s Reply & Resp. 16:12–18:12, ECF No. 25.) Plaintiff further contends that Defendants have failed to explain why the evidence that they seek would preclude summary judgment in favor of Plaintiff. (*Id.*) However, contrary to Plaintiff's assertions, the facts that Defendants seek could preclude summary judgment because the discovery that Defendants seek are directly related to the issues of Plaintiff's alleged failure to provide adequate notice of intent to distribute the bond funds and whether the amount that Plaintiff allegedly disbursed was reasonable for the work that Defendants had not completed.

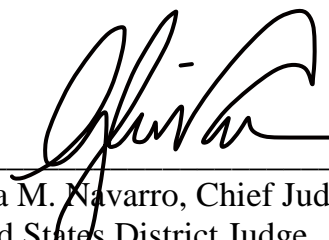
Therefore, because Defendants have not had an opportunity to complete discovery¹ and have asked for additional time under Rule 56(d), Plaintiff's Motion for Summary Judgment will not be considered at this time and is therefore DENIED without prejudice.

IV. CONCLUSION

IT IS HEREBY ORDERED that Defendants' Countermotion for Rule 56(d) Relief (ECF No. 23) is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment (ECF No. 16) is **DENIED** without prejudice.

DATED this 19 day of June, 2014.


 Gloria M. Navarro, Chief Judge
 United States District Judge

¹ The propriety of Rule 56(d) relief is further supported by the fact that not only is discovery not yet closed, but the parties also recently stipulated to continue the discovery cut-off date from July 6, 2014, to September 5, 2014. (Order on Stipulation, ECF No. 28.)